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COVID-19 – FAQ/Slovakia

COMPLIANCE

Is there an exemption for the registration of beneficial owners of companies supplying medical goods and equipment to a public institution in times of emergency?

It was not until recently. Contrary to other Slovak procurement and transparency laws which do in emergency situations lower the formal requirements for the validity and effectiveness of a public contract, the Anti-Shell Companies Law did not provide for a similar rule. Any private company doing business with the public sector above a certain threshold was obliged to verify and register its beneficial owners in an online registry prior to the conclusion of the public contract. However, on 25 March 2020 the parliament passed an amendment that such a registration and verification is not necessary, as long as the contract (i.) is concluded via public procurement procedure (direct negotiation), and (ii.) is necessary as a consequence of an emergency situation which was not caused by the public procurer and (iii.) there is lack of time to conduct an ordinary tender. This amendment will become effective without undue delay.

GDPR

Are companies now entitled to ask their employees or visitors for additional information about travel history or possible symptoms? If so, where are the legal limits?

GDPR and other data protection were not set aside. They do not provide a lower standard of protection of personal data during an emergency situation. Depending on the specific circumstances, employers may be entitled to ask their employees for information about their possible positive COVID-19 diagnosis, about their recent visits to high-risk areas, or whether they have come into contact with persons infected with the COVID-19.

Government announced that compulsory measuring of body temperatures will be taking place at the entrance to hospitals, factories, shops and other places, effective from March 30, 2020. Is such regulation in accordance with the data protection laws?

Mandatory taking employees' temperature entering the workplace, is currently quite problematic as it lacks a clear legal basis under the GDPR. Compulsory measuring customers' temperature upon entering premises might not be considered as a violation of the GDPR if no other processing is conducted and the customer cannot be identified by reference to the temperature taken. Mandatory temperature checks might be, however, problematic from the consumer law point of view. Should the corresponding order of the Slovak Public Health Authority or the Governmental Ordinance be adopted, these compulsory temperature checks may be deemed legitimate since the processing could be considered as carried out in interest of public health.

Can the Slovak Public Health Authority disclose the identity of a person who has contracted COVID-19 to third parties such as the municipal office?

Neither GDPR nor the national legislation enables the Slovak Public Health Authority to disclose the name of a person who has contracted COVID-19 to third parties without a corresponding legal basis. That means that the Slovak Public Health Authority cannot share the name of the infected individuals with third parties.

Can the Slovak Public Health Authority use individuals' communication data (in particular, meta data related to mobile phones) in its efforts to monitor, contain or mitigate the spread of COVID-19?

Legislative measures, adopted on 25 March 2020, enable the Slovak Public Health Authority to require from telecommunication operators and use identification and localisation meta data in order to identify individuals. The authority should have a "bulk access" only to anonymised data for statistical purposes necessary to prevent and model further developments of threats to life and health. If the authority needs meta data of individual users, the formal request of the authority shall include the justification and also identification of users, or at least the method of determining the identification of users who are subjects of such a formal request. The data of individuals may be used only for notification purposes and for identification of users for the protection of life and health. This regime is time limited until 31 December 2020.

CONTRACTS

Can circumstances associated with the outbreak of coronavirus be considered a force majeure event in commercial contractual relations; if yes, what are the implications on the contractual relationship?

Slovak law contains a force majeure clause in the form of "circumstances precluding liability". Any obstacle falling within this definition must meet the conditions of objectivity, unpredictability, and unavoidable cause. The outbreak of the coronavirus, or as the case may be, the governmental measures adopted to prevent its spread, fall within this definition. If proven that the breach of the contractual obligation is due to such an obstacle, the breaching party is relieved from its obligation to compensate damages caused due to such a breach and during the existence of the said obstacle only. This does not mean that the obligation in question ceases to exist. Circumstances precluding liability do not affect the obligation of the breaching party to pay a contractual penalty for the contractual breach, if such a contractual penalty was agreed in writing. However, an excessive contractual penalty can be decreased by the court in case of a dispute.

LITIGATION

Is it possible to suspend the statutory time period of 15 days for an appeal during an emergency situation?

Based on a new law passed on 25 March 2020 which will become effective without undue delay, private law statutes of limitations will be suspended (from the date the law becomes effective) until 30 April 2020, i.e. deadlines for actions and submissions to courts applying for protection of individual rights will be prolonged. Majority of procedural deadlines granted by general procedural rules or courts in litigations

will be suspended similarly, e.g. deadline for submitting an appeal will be prolonged.

Does the new law that was passed on 25 March 2020 apply also to deadlines in the enforcement proceedings?

The said law does not regulate the enforcement proceedings explicitly. However, provisions regarding the suspension of deadlines apply also to deadlines granted by general procedural rules or courts in enforcement proceedings.

Will the court hearings be automatically cancelled during an emergency situation?

According to the new legislation passed on 25 March 2020, the court hearings shall be held only in special cases, i.e. in general, in commercial litigations hearings should be cancelled, or postponed. However, a court hearing is not cancelled or postponed automatically; any such action is at the sole discretion of the competent court. Provided no written confirmation on cancelation or postponement is received, we recommend contacting the respective court.

EMPLOYMENT

Business premises have been closed due to the recent public order of the Slovak Public Health Authority. Does it mean that my employees working in such premises cannot perform the work at all?

Unless you were ordered to close your business premises due to the fact that your employee was diagnosed with COVID-19, you may request that your employees continue to perform work inside such closed premises. The assigned work must be in line with their employment contracts. The current public order does not prohibit the performance of work as such because the selected premises have been closed to the public only. Thus, in closed operations work tasks may be still performed by the employees.

Does the employer have the right to reduce employees' salaries on the basis of obstacles at work on the employer's side?

As a general rule, the employer may not reduce the employee's salary without his/her consent. Under the Slovak Labour Code, there is one exception to this rule. The employer and employees' representatives may conclude a written agreement defining serious operational reasons due to which the employer would not assign work to employees, but would still pay them at least 60% of their average earnings. The written agreement between the employer and employees' representatives may not be replaced by a unilateral decision of the employer – if there are no employees' representatives, the employer may not reduce employees' salaries on the basis of serious operational reasons. On 25 March 2020, the parliament approved a bill under which the government would provide a financial contribution to employers on the condition that they would agree to keep jobs for a certain period of time during and after the crisis. It is understood that the employers who were forced to close their business operations as well as the employers who suffered a decline in demand for their goods/services would fall within this new regulation.

Does COVID-19 constitute an obstacle at work on the employer's or the employee's side? Should remuneration continue to be paid in the event of an epidemic?

If the employee has been diagnosed with COVID-19, this naturally constitutes an obstacle at work on his/her side. In such a case, the employee shall be entitled to wage compensation/sick pay for the duration

of his/her temporary incapacity to work, which shall be paid by his/her employer during the first ten days and thereafter by the Social Insurance Agency. If the employee has been placed in home quarantine because he/she has returned from abroad, this constitutes an obstacle at work on his/her side unless the employee agrees with the employer on the performance of work from home, provided the nature of work allows it. If the employee cannot perform work from home or fails to agree with the employer on the performance of work from home, the employee shall be entitled to wage compensation/sick pay for the duration of his/her home quarantine. On 25 March 2020, the parliament approved a bill under which sick pay would be paid in the case of home quarantine by the Social Insurance Agency from day one. If the employee has been trapped abroad due to travel restrictions and is unable to perform work, this constitutes an obstacle at work on his/her side. In such a case, the employee is not entitled to receive wage compensation from his/her employer, but he/she may agree with the employer on taking holiday or substitute time-off accumulated for previous overtime work or public holiday. If the employee is unable to perform work because he/she is taking care of a child younger than ten years of age whose school or kindergarten has been closed, this constitutes an obstacle at work on the employee's side. In such a case, the employee shall be entitled to a payment from the Social Insurance Agency from day one. If the employer has been forced to close its operation by the competent authorities and employees cannot perform work from home, this constitutes an obstacle at work on the employer's side. In such a case, the employer shall continue to pay employees in accordance with their employment contracts unless otherwise agreed with employees (reduction of salaries) or employees' representatives (written agreement defining serious operational grounds). If the employer cannot assign work to employees due to coronavirus-related decline in workload, this constitutes an obstacle at work on the employer's side. In such a case, the employer shall continue to pay employees in accordance with their employment contracts unless otherwise agreed with employees (reduction of salaries) or employees' representatives (written agreement defining serious operational grounds).

Are employees placed in home quarantine allowed to perform work for their employer?

If the employee has been placed in home quarantine, he/she can perform work from home in case the nature of work allows it and the employer and the employee agreed that the latter would perform work from home. However, during the time of performance of work from home due to quarantine, the employee cannot receive wage compensation/sick pay as he/she performs work for which he/she receives a regular salary based on the employment contract.

Are employees allowed to perform work from home in the absence of the employer's consent?

No. The consent of the employer is always required. It may, however, be included directly in the employment contract in case the contract states that the employee's place of work shall be (also) his/her home. The same applies if home office is agreed upon in the employment contract. Otherwise, separate employer's consent is necessary for the employee to perform work from home.

Can the employer force an employee to go on a paid leave?

It is a right of the employer under the Slovak Labour Code to order an employee a paid leave, but the employer shall notify the employee at least 14 days in advance. The employer may not order the employee to take a disproportionate part of his/her annual paid leave because when ordering a paid leave legitimate interests of the employee shall also be taken into account. Employers with employees' representatives need to be aware of the fact that in case they would like to order a paid leave to all employees, such a course of action would be considered as collective paid leave for which the consent

of employees' representatives is required.

Should the employer provide employees with protective face masks?

Except for medical staff that is directly exposed to the risk of the disease, the obligation of the employer to provide employees with protective tools is also applicable in the case of selected professions specified in the decree of the Slovak Public Health Authority. Other employees should protect themselves and approach responsibly towards others in the same way as any other person at their own costs. This, however, does not affect the employer's general obligations regarding occupational safety and health.

CORPORATE

Most corporations are about to approve their annual accounts. Is it possible to convene a general assembly of a Slovak corporation during an emergency situation/quarantine?

It depends on several factors. The ban on organising gatherings issued by the Slovak authorities also covers many general assemblies, and its application will be based on the number and personal background of attendees, relations between shareholders and place of the general assembly. While general assemblies of companies with many shareholders would clearly violate the ban, general assemblies with just two cooperating shareholders will be possible. One must be aware that decisions of general assembly held during the ban on public gatherings might be challenged as unlawful or void (e.g. by a shareholder who was unable to attend). Where possible (limited liability companies, simplified joint stock companies), we recommend adopting circular resolutions. General assemblies of Slovak joint stock companies might adopt resolutions per rollam or via electronic means according to the amendment of the Commercial Code adopted on 25 March 2020.

Does the Board of Directors have any special obligations during the COVID-19 emergency situation?

The Board of Directors is obliged to inform the Supervisory Board without undue delay of any facts (e.g. secondary insolvency or lack of liquidity) that may substantially affect the development of business activities and the state of the company's assets, in particular its liquidity. At the request of the Supervisory Board or its members, the members of the Board of Directors are also obliged to attend the meetings of the Supervisory Board and provide the members of the Supervisory Board with the required information to the required extent.

Are there any legal exceptions applicable to the regular course of business of corporations during the emergency situation?

Yes, there are several exceptions. For example, cash payments limitations are not applicable during an emergency situation. Also a strike of certain professions during an emergency situation is unlawful – e.g. doctors, nurses and other health workers during this pandemics COVID-19 are not allowed to use their right to strike.

REAL ESTATE

Due to COVID-19 mobile networks are under pressure. Does an owner of a building have an obligation to enable access for the maintenance staff during an emergency situation?

In general, the access to mobile network devices is governed by a lease agreement. If such an agreement does not exist, pursuant to the Slovak law mobile network providers' employees are entitled to enter a third party's real estate (building, land) for the purpose of repairing and maintaining the mobile network devices. At the same time, they are obliged to ensure that their actions do not cause any damage to the real estate.

Has a business operation in a shopping centre that does not fall into the category of mandatory closed businesses operations a right to close its premises to the public? Are there any possible sanctions?

The conditions of operation are usually governed by a lease agreement. A duty to keep a shop opened during opening hours of a shopping centre is mostly one of stipulations of the lease agreement stipulations. If there is such a duty in the lease agreement, the lessee is obliged to keep the shop open. Breaching this duty may constitute the lessor's right to a contractual penalty (depending on a particular stipulation in the lease agreement). However, based on recent governmental measures, as of 25 March 2020 supermarkets, grocery stores, drugstores, pharmacies must close their shops on Sundays. Such a closure of the shops will not constitute a breach of the lease agreement. In addition, not adhering to this measure will result in a fine of up to EUR 20 000 by public authorities.

What are the consequences of the delayed rent related to premises that had to be shut due to the governmental quarantine measures?

The delayed payment of rent entitles the lessor: (i.) to request the late payment interest in the amount agreed in the contract, or otherwise in the statutory amount; (ii.) to request the payment of the contractual penalty, if agreed in writing; (iii.) to give a 3-months' notice from the lease contract concluded for a definite period of time, provided the lessee is in delay with the payment of the rent for more than one month and provided the said contract does not stipulate otherwise; (iv.) to withdraw from the lease contract, provided the delay with payment represents a substantial breach of the contract and provided the said contract does not stipulate otherwise; (v.) to withdraw from the lease contract, provided the lessee does not pay the rent in the additional time period provided by the lessor and provided the said contract does not stipulate otherwise.

Is there a specific additional time period in which the lessee has to pay the rent? Does the lessor have an obligation to send a reminder to the lessee to pay the rent?

Slovak law does not provide for any specific additional time periods for rent payment and the lessor is not obliged to send a reminder to the lessee. However, provided the lessor wishes to withdraw from the lease contract due to the breach of the lessee (failure to pay the rent) and at the same time it is not clear whether the said breach is substantial, the lessor can withdraw from the contract only if the lessee does not fulfil its obligation within an appropriate time period as set by the lessor.

COMPETITION/STATE AID

Do undertakings which have already been granted state aid as a result of "rescue and restructuring" have the possibility to apply again for state aid due to the damages caused by COVID-19?

Slovakia can compensate undertakings in sectors that have been hit particularly hard by the outbreak of COVID-19 such as transport, tourism, culture, hospitality and retail and organisers of cancelled events for damages suffered due to and directly caused by the COVID-19 outbreak. Slovakia must notify such damage compensation measures, and the European Commission will assess them as state aid. The principle of 'one-time last time' of the Rescue and Restructuring Guidelines does not cover aid under Article 107(2)(b) TFEU. Therefore, Slovakia may compensate under Article 107(2)(b) TFEU the damages directly caused by the COVID-19 outbreak to undertakings that have previously received aid under the Rescue and Restructuring Guidelines.

Can Slovakia support the undertakings outside the scope of state aid, i.e. without having to notify this aid to the European Commission, due to the COVID-19 outbreak?

There are various options available. These include measures applicable to all undertakings regarding wage subsidies, suspension of payments of corporate and value added taxes or social welfare contributions, or financial support directly to consumers for cancelled services or tickets not reimbursed by the concerned operators. An important condition for these exceptions is to apply these kinds of measures to all undertakings, not to only to selected groups of undertakings.

Do undertakings have the possibility to apply for state aid beyond the existing state aid measures due to the COVID-19 outbreak?

Beyond the existing possibilities based on Article 107(3)(c) TFEU, temporary limited amounts of aid to undertakings that find themselves facing a sudden shortage or even unavailability of liquidity can be a solution during the current circumstances. According to the Temporary Framework for State aid measures, aid in the form of direct grants, repayable advances or tax advantages consists of any aid which does not exceed EUR 800 000 per undertaking. For agricultural, fisheries and aqua cultural sectors, aid cannot exceed EUR 120 000 per undertaking active in the fishery and aquaculture sector or EUR 100 000 per undertaking active in the primary production of agricultural products. This aid may be granted no later than 31 December 2020 to undertakings that were not in difficulty on 31 December 2019.

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